

New Jersey Commissioner of Education

Final Decision

D.E. and J.E., on behalf of minor children, A.E., E.E.,
and C.E.,

Petitioners,

v.

Board of Education of the Borough of Oakland,
Bergen County,

Respondent.

Synopsis

Petitioners filed a pro se petition challenging the determination of the respondent Board that their minor children were not eligible to receive a free public education in respondent's school district. The Board sought reimbursement of tuition from petitioners, asserting that the children were not domiciled within the school district during the 2022-2023 school year. Petitioners did not appear at the May 15, 2023 hearing in this matter, and the record closed at the conclusion of the ex parte hearing.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1, public schools are free to any persons over five and under twenty five years of age who are domiciled within the school district; pursuant to *N.J.A.C.* 6A:22-6.2., if a student does not have a right to attend the school district, the Commissioner may assess tuition; in this case, petitioners did reside in Oakland in the past, but left in September 2021 due to a foreclosure; petitioners subsequently moved in with relatives in Hawthorne and the Board recognized the children as homeless during the 2021-2022 school year; they were permitted to remain enrolled in the school district for the entire school year pursuant to the McKinney-Vento Homeless Assistance Act; there is no evidence that petitioners and their children were ever domiciled in Oakland during the 2022-2023 school year, and the Board contends that they continue to reside in Hawthorne; the Bergen County Executive County Superintendent issued a determination in October 2022 that the children were not homeless and that they were domiciled in Hawthorne and entitled to a free education in Hawthorne schools for the remainder of the school year; petitioners failed to appear at a hearing in this matter on May 15, 2023 and provided no explanation for their failure to appear. The ALJ concluded that petitioners have abandoned their appeal. Accordingly, the ALJ ordered the petition dismissed and granted the Board's counterclaim for tuition in the total amount of \$53,808.82.

Upon review, the Commissioner concurred with the ALJ findings and conclusions and adopted the Initial Decision of the OAL as the final decision in this matter. Petitioners were directed to reimburse the Board in the revised amount of \$53,808.06 for the period from November 1, 2022 through the end of the 2022-2023 school year, for tuition costs incurred during the time period in which A.E., C.E., and E.E. were ineligible to attend school in Oakland. The petition of appeal is hereby dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

206-23

OAL Dkt. No. EDU 11519-22

Agency Dkt. No. 322-11/22

New Jersey Commissioner of Education

Final Decision

D.E. and J.E., on behalf of minor children,
A.E., E.E., and C.E.,

Petitioners,

v.

Board of Education of the Borough of
Oakland, Bergen County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioners abandoned their appeal and failed to sustain their burden of establishing that they were domiciled in Oakland during the 2022-2023 school year. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in Oakland's schools during that time.

Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against petitioners for the time period during which the minor children were ineligible to attend school in Oakland. Therefore, the Board is entitled to tuition reimbursement in the amount of \$53,808.06¹ for the

¹ This amount is based on the testimony of the district's School Business Administrator, as summarized in the Initial Decision. The Commissioner was not provided with a transcript of the testimony. The total includes \$19,052.14

period from November 1, 2022 through the end of the 2022-2023 school year, during which time petitioner's minor children were ineligible to attend school in Oakland.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioners are directed to reimburse the Board in the amount of \$53,808.06 for the period from November 1, 2022 through the end of the 2022-2023 school year, for tuition costs incurred during the time period in which A.E., C.E., and E.E. were ineligible to attend school in Oakland. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 12, 2023
Date of Mailing: July 13, 2023

(\$134.17 per day x 142 days) for tuition for A.E. and \$17,377.96 (\$122.38 per day x 142 days) each for C.E. and E.E. The Initial Decision awarded \$17,378.34 each for C.E. and E.E. However, there appears to be a mathematical error in that calculation, and it has been revised by the Commissioner.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11519-22

AGENCY DKT. NO. 322-11/22

**D.E. AND J.E. ON BEHALF OF MINOR
CHILDREN A.E., E.E., AND C.E.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF OAKLAND, BERGEN COUNTY,**

Respondent.

No appearance by D.E. and J.E., petitioners, pro se

Stephen R. Fogarty, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: May 15, 2023

Decided: June 13, 2023

BEFORE **SUSANA E. GUERRERO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, parents of minor children A.E., E.E., and C.E., challenged the respondent Board of Education's residency determination. In its counterclaim, the respondent Board of Education of the Borough of Oakland (Respondent, District or

Oakland) seeks reimbursement of tuition from petitioners, asserting that the children were not domiciled within the school District during the 2022–2023 school year.

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on December 21, 2022. At the initial prehearing telephone conference, the parties requested that the matter be bifurcated because it involved two separate school districts. By order dated March 1, 2023, I entered an order granting Oakland's motion to bifurcate the matter originally captioned D.E. on behalf of minor children, A.E., E.E., C.E., and R.E. v. Board of Education of the Borough of Oakland, Bergen County and Board of Education of the Ramapo Indian Hills Regional High School District, Bergen County, and ordering that the matter proceed against Oakland under the caption D.E. and J.E. on behalf of minor children, A.E., EE., and C.E. v Board of Education of the Borough of Oakland, Bergen County, using the same OAL docket number; and against Ramapo Indian Hills Regional High School District under caption D.E. and J.E. on behalf of minor child R.E. v. Board of Education of the Ramapo Indian Hills Regional High School District, Bergen County, under a separate docket number. A Prehearing Order was entered on March 15, 2023.

A hearing was initially scheduled for April 3, 2023, but adjourned. A subsequent telephone conference was scheduled for April 25, 2023, and the petitioners did not participate. By email dated May 1, 2023, the parties were informed that a peremptory hearing was being scheduled for either May 15, 2023 or June 27, 2023, and they were asked to advise by May 5, 2023 of any conflict with either date. Petitioners did not advise as to their unavailability on either day. Therefore, on May 5, 2023, the OAL sent the parties a Notice of Hearing, for an in-person hearing at the OAL in Newark on May 15, 2023. Petitioners did not appear for the hearing, and the record closed at the conclusion of the ex parte hearing.

FINDINGS OF FACT

Having reviewed and considered the uncontested testimony presented by Annette M. Wells (Wells), District's School Business Administrator and Board Secretary, at the

hearing, the documentary evidence presented at the hearing, and the petition and counterclaim filed by the parties, I **FIND** the following **FACTS** in this matter:

The petitioners did not appear for the hearing, and there is no indication that they did not receive notice of the hearing. The petitioners never called or wrote to the OAL explaining their failure to appear for the prehearing conferences or the hearing. I, therefore, **FIND** that that the petitioners have abandoned their appeal.

The petitioners and their children once resided in Oakland, however, they left Oakland in or around September 1, 2021, apparently due to a foreclosure. During the 2021–2022 school year, they resided with relatives in Hawthorne. During that school year, the Board recognized the children as homeless, and they were permitted to remain enrolled in the District schools for the entire school year pursuant to the McKinney-Vento Homeless Assistance Act. There is no evidence that the petitioners and their children were ever domiciled in Oakland during the 2022–2023 school year, and it is the District’s understanding that they continue to reside in Hawthorne.

When the petitioners represented to the District at the start of the 2022–2023 school year that they were still not residing in Oakland, the District’s Superintendent of Schools requested a homeless determination for the students from the Executive County Superintendent. In early October 2022, about a month following the request, the Executive County Superintendent determined that the students were not homeless and that they were domiciled in Hawthorne and entitled to a tuition-free education in the Hawthorne school district for the remainder of the school year.

At an October 27, 2022 Board meeting, the Oakland Board of Education held a hearing, which the parents did not attend, and voted to disenroll the students from the District based on their non-resident status.

Petitioners filed the subject petition challenging the Board’s decision on November 21, 2022. In that petition, D.E. acknowledged that the family resides in Hawthorne with relatives.

During the 2022–2023 school year A.E., C.E. and E.E. attended school in Oakland, which is a kindergarten through eighth grade district. During this school year, A.E. attended Valley Middle School, while C.E. and E.E. attended Manito Elementary School in the District.

Wells testified that the daily tuition rate for A.E. at Valley Middle School is \$134.17 (as the per pupil yearly rate is \$24,151). Wells calculated that from November 1, 2022 to May 15, 2023, the day of the hearing, the per pupil tuition amounted to \$24,151.¹ She testified that, given the daily tuition rate, the cost to continue to attend Valley Middle School from May 16, 2023 to June 22, 2023, the last day of school for the 2022–2023 school year, totals \$3,488.42. Therefore, she testified that the tuition due for A.E. from November 1, 2022 through the end of the 2022–2023 school year totals \$19,052.14.

Wells testified that the daily tuition rate to attend Manito Elementary is \$122.38 (as the annual tuition rate is \$22,029). This amounts to tuition totaling \$14,196.46 for the period between November 1, 2022 and May 15, 2023, and \$3,181.88 between May 16, 2023 and June 22, 2023, which amounts to \$17,378.34 per pupil from November 1, 2022 through the end of the school year.

Therefore, the respondent asserts that tuition for A.E., C.E., and E.E. from November 1, 2022 through the end of the school year totals \$53,808.82.

LEGAL ANALYSIS AND CONCLUSIONS

Any child between the ages of five and twenty years old is entitled to a free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of a school district if his parent or guardian has a permanent home in the district such that “the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.” N.J.A.C. 6A:22-3.1(a)(1). A student may attend school in a

¹ While the respondent’s counterclaim seeks tuition reimbursement retroactive to October 13, 2022, at the hearing Wells testified that the respondent only seeks reimbursement retroactive to November 1, 2022 given that the Board took action to disenroll the students at the end of October 2022.

district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. Of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001). Where the local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents.

Here, the respondent produced Oakland's School Business Administrator and Board Secretary, Wells, who testified clearly and credibly concerning the per pupil cost to attend the middle school and elementary school in the District, that the residency investigation determined that A.E., E.E. and C.E. were not domiciled in Oakland, and the cost of tuition that applies to these children. I accept her testimony as fact.

N.J.A.C. 6A:22-6.2(a) authorizes the Commissioner of Education to assess tuition for non-resident students. It states:

If in the judgement of the Commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the Commissioner are enforced.

N.J.S.A. 18A:38-1(b) also requires that tuition be calculated on the basis of 1/180 of the total annual per pupil cost to the district multiplied by the number of days of ineligible attendance.

Here, the petitioners have failed to appear for the scheduled hearing, without explanation, and there is no testimony or other evidence challenging the District's

residency determination or tuition costs. I **CONCLUDE** that since the petitioners have abandoned their appeal, their Petition should be dismissed.

Based upon the facts adduced at the hearing, I **CONCLUDE** that the petitioners' children A.E., E.E. and C.E. were not domiciled in the Borough of Oakland during the 2022–2023 school year, and not entitled to a free public education there during this period. I also **CONCLUDE** that the Board of Education of the Borough of Oakland is entitled to reimbursement, retroactive to November 1, 2022, for the costs of tuition for the three students consistent with the per diem rates presented by the respondent. Specifically, the petitioners must reimburse the respondent at a per diem rate of \$134.17 for A.E. to attend the middle school, and the per diem rate of \$122.38 for E.E. and C.E. Should the three students remain enrolled in the District through the end of the 2022–2023 school year, the parents are responsible for reimbursing the respondent in the amount of \$53,808.82 for A.E., E.E., and C.E.

ORDER

It is hereby **ORDERED** that the petitioners' residency appeal is **DISMISSED** as a consequence of their failure to appear at the hearing without providing any explanation for the non-appearance. It is further **ORDERED** that respondent's counterclaim seeking tuition reimbursement in **GRANTED**. It is further **ORDERED** that the petitioners reimburse the respondent for the period beginning November 1, 2022 to the date the students are disenrolled from the District, as follows: at a daily tuition rates of \$134.17 for A.E.; a daily tuition rate of \$122.38 for C.E.; and a daily rate of \$122.38 for E.E.


I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 13, 2023
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

Witnesses

For Petitioners:

None

For Respondent:

Annette M. Wells

Exhibits

For Petitioners:

None

For Respondent:

R-1 to R-5 Not in Evidence

R-6 Request to Executive County Superintendent for Homelessness
Determination dated September 7, 2022

R-7 Not in Evidence

R-8 Homeless Determination dated October 13, 2022

R-9 Not in Evidence

R-10 Not in Evidence

R-11 Resolution Approving Disenrollments dated October 27, 2022